

# **EXHIBIT D**

**Sim, Charlie**

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**From:** Zhu, Michelle J.  
**Sent:** Wednesday, February 7, 2024 11:07 AM  
**To:** Jason Wietholter  
**Cc:** Robb, Andrew; Angeline Alcoriza; opp.headwater.verizon@raklaw.com; rak\_headwater@raklaw.com; \*\*\* GDCVerizon-Headwater  
**Subject:** RE: Headwater Research v. Verizon et al (Case 2:23-cv-00352) - Correspondence (HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY)

Counsel,

We have asked repeatedly, in both correspondence and on the meet and confer call, for Headwater to identify where in its infringement contentions it believes it has reasonable and particularly accused network-side functionality. We see that Headwater has only pointed to pages 10–13 of Exhibit G. Accordingly, without agreeing to the adequacy of those allegations, Verizon will perform a reasonable search for technical documentation relating to network-side technologies described in pages 10–13 of Exhibit G.

As for Headwater's repeated citation to conclusory language in the cover pleading or the introductory line of the claim charts, we have repeatedly explained that such vague, conclusory statements are inappropriate, including because they give us no guidance on what we are supposed to be searching for, and it is not up to us to guess at which network-side technologies Headwater potentially might intend to accuse of infringement.

We also want to correct an inaccurate suggestion in your email below relating to the meet and confer call. On the call, we noted that Headwater included screenshots of Verizon's website, allegedly showing various phone types and data plans available for purchase. But Headwater uses those images in an attempt to establish the existence of phones that implement those data plans—not to accuse the website itself of including any infringing technology. Indeed, both parties agreed on the call that Headwater is surely not looking for the HTML code for the website in the technical productions. This exchange further supports Verizon's position—that even when Headwater included images of Verizon's website, the focus of the allegations was still on the end-user device.

Accordingly, Verizon will proceed with collecting materials relating to the technologies described in pages 10–13 of Exhibit G. If Headwater continues to demand production of network-side technologies without providing greater clarity, we expect court intervention will be necessary to resolve the impasse.

**Michelle J. Zhu**  
Associate Attorney

T: 202.777.9413  
MZhu@gibsondunn.com

**GIBSON DUNN**  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue N.W., Washington, D.C. 20036-5306

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**From:** Jason Wietholter <jwietholter@raklaw.com>  
**Sent:** Friday, January 26, 2024 3:29 PM  
**To:** Zhu, Michelle J. <MZhu@gibsondunn.com>  
**Cc:** Robb, Andrew <ARobb@gibsondunn.com>; Angeline Alcoriza <aalcoriza@raklaw.com>; opp.headwater.verizon@raklaw.com; rak\_headwater@raklaw.com; \*\*\* GDCVerizon-Headwater <GDCVerizon-

Headwater@gibsondunn.com>

**Subject:** Re: Headwater Research v. Verizon et al (Case 2:23-cv-00352) - Correspondence (HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY)

**[WARNING: External Email]**

Counsel,

We have identified, in writing, where in the infringement contentions Headwater has accused network-side functionalities on several occasions.

Indeed, following the parties' January 12, 2024, meet and confer, and as explained in my January 12, 2024 email, Headwater's amended infringement contentions, "provid[e] further detail with respect to the accused instrumentalities to confirm that the parties are on the same page as to the scope of the accused products." We explained that Headwater's "infringement theories remain the same" with Headwater "merely providing further detail as requested by Verizon and in light of the progression of the case," including "additional exemplary evidence from Verizon's confidential documents." Our amended contentions served with that email clarify that the "Accused Instrumentalities" include "smartphones, basic phones, tablets, laptops, and hotspot devices sold (including those sold in bundles with data plans) or used by Verizon in conjunction with Verizon's servers, hardware, software, and services leased, owned, supported, and/or operated by Verizon comprising Verizon's wireless network services, and all versions and variations thereof since the issuance of the asserted patent." Headwater further identified Verizon's confidential documents produced after Headwater's initial infringement contentions were served, identifying Verizon "Servers, hardware, software, and services leased, owned, supported, and/or operated by Verizon comprising Verizon's wireless network services functionality, including but not limited to "OTADM," "PROPOTA" "VZOTADM," "FOTA," "SDM," and/or "DM." See, e.g., VZN-HW0174593, VZN-HW0177231, VZN-HW0173610, VZN-HW0169149." Headwater's 1/12/24 Preliminary Infringement Contentions cover pleading.

Headwater identified the same, publicly available, accused network-side functionality identified above during the parties' January 12, 2024, meet and confer. For instance, Headwater's counsel walked Verizon's counsel through Headwater's infringement charts and cover pleadings, identifying the accused network-side functionalities, including "Verizon's servers, hardware, software, and services leased, owned, supported, and/or operated by Verizon comprising Verizon's wireless network services" and that "Verizon offers telecommunications service plans to customers that are provided through various network elements such as telecommunications base stations and cell sites, edge servers, and other telecommunications servers. Verizon provides various network service plans to customers for purchase, including through the Verizon.com website as well as through Verizon-provided services such as its pre-paid mobile service category, Total By Verizon." See, e.g., Headwater's 9/28/23 Preliminary Infringement Contentions, Ex. G at 1. Headwater's counsel further identified specific citations in Headwater's infringement charts, such as "Verizon's network receives an attach request, bearer resource allocation request, bearer resource modification request, or PDN connectivity request from a wireless end-user device (UE), which includes a report comprising information about the UE's service state such as UE network capability, UE status, and protocol configuration options (PCO)" and identifying 3GPP TS 24.301 v15.03 citations in Headwater's charts. See, e.g., id. at 10-13. Verizon's counsel acknowledged these specific examples and others provided by Headwater's 9/8/23 infringement contentions, specifically that Headwater's infringement contentions identified "Data Boost" and other aspects of Verizon's plans.

Headwater also identified the same accused functionality before the parties' meet and confer as explained and identified in my November 14, 2023, and January 4, 2024, letters.

Regards,

**Jason Wietholter**

**Russ, August & Kabat**

12424 Wilshire Boulevard, 12th Floor | Los Angeles, California 90025

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On Jan 19, 2024, at 7:04 AM, Zhu, Michelle J. <MZhu@gibsondunn.com> wrote:

Counsel,

We are following up on our meet and confer on last Friday, January 12. Thank you for promptly producing your amended infringement contentions. On the call, we discussed that you would also identify, in writing, where in the infringement contentions Headwater believes it has accused network-side functionalities, so we can better consider Headwater's position. If you could please provide that information.

Also, to confirm: we stated on the call that we would produce materials on a rolling basis, and that we expected to produce additional materials, including testing, design, and historic materials, in the coming months. You asked us to put that in writing, which we are doing now.

Best,

**Michelle J. Zhu**  
Associate Attorney

T: 202.777.9413  
[MZhu@gibsondunn.com](mailto:MZhu@gibsondunn.com)

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**From:** Jason Wietholter <[jwietholter@raklaw.com](mailto:jwietholter@raklaw.com)>  
**Sent:** Friday, January 12, 2024 10:54 AM  
**To:** Robb, Andrew <[ARobb@gibsondunn.com](mailto:ARobb@gibsondunn.com)>  
**Cc:** Angeline Alcoriza <[aalcoriza@raklaw.com](mailto:aalcoriza@raklaw.com)>; [opp.headwater.verizon@raklaw.com](mailto:opp.headwater.verizon@raklaw.com); [rak\\_headwater@raklaw.com](mailto:rak_headwater@raklaw.com); \*\*\*  
GDCVerizon-Headwater <[GDCVerizon-Headwater@gibsondunn.com](mailto:GDCVerizon-Headwater@gibsondunn.com)>  
**Subject:** Re: Headwater Research v. Verizon et al (Case 2:23-cv-00352) - Correspondence

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**[WARNING: External Email]**

Thanks, Robb. Talk to you at 11:00AM PT.

**Jason Wietholter**

**Russ, August & Kabat**

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On Jan 11, 2024, at 5:10 PM, Robb, Andrew <[ARobb@gibsondunn.com](mailto:ARobb@gibsondunn.com)> wrote:

That works. Let's aim for 11:00 AM PT. We can also address, at least at a high level, the correspondence Headwater just sent.

**Andrew Robb**  
Associate Attorney

T: +1 650.849.5334 | M: +1 408.960.9187  
[ARobb@gibsondunn.com](mailto:ARobb@gibsondunn.com)

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**From:** Jason Wietholter <[jwietholter@raklaw.com](mailto:jwietholter@raklaw.com)>  
**Sent:** Thursday, January 11, 2024 8:09 AM  
**To:** Robb, Andrew <[ARobb@gibsondunn.com](mailto:ARobb@gibsondunn.com)>  
**Cc:** Angeline Alcoriza <[aalcoriza@raklaw.com](mailto:aalcoriza@raklaw.com)>; [opp.headwater.verizon@raklaw.com](mailto:opp.headwater.verizon@raklaw.com); [rak\\_headwater@raklaw.com](mailto:rak_headwater@raklaw.com); \*\*\* GDCVerizon-Headwater <[GDCVerizon-Headwater@gibsondunn.com](mailto:GDCVerizon-Headwater@gibsondunn.com)>  
**Subject:** Re: Headwater Research v. Verizon et al (Case 2:23-cv-00352) - Correspondence

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**[WARNING: External Email]**

Hi Andrew,

Are you available at either 10AM or 11AM PT tomorrow? We can plan to use this dial-in:  
424-334-0565 (no pin needed).

Thanks,  
**Jason Wietholter**  
**Russ, August & Kabat**  
12424 Wilshire Boulevard, 12th Floor | Los Angeles, California 90025  
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On Jan 9, 2024, at 6:36 PM, Robb, Andrew <[ARobb@gibsondunn.com](mailto:ARobb@gibsondunn.com)> wrote:

Counsel – given the back and forth correspondence, it would probably be most efficient to set up a call on this. Are the relevant members of your team available on Friday? If so, please let us know. Currently, I'm flexible that day other than 1:00 – 2:00 PT.

Best regards,

Andrew

**Andrew Robb**

Associate Attorney

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**From:** Angeline Alcoriza <[aalcoriza@raklaw.com](mailto:aalcoriza@raklaw.com)>

**Sent:** Thursday, January 4, 2024 5:35 PM

**To:** [opp.headwater.verizon@raklaw.com](mailto:opp.headwater.verizon@raklaw.com)

**Cc:** [rak\\_headwater@raklaw.com](mailto:rak_headwater@raklaw.com); \*\*\* GDCVerizon-Headwater  
<[GDCVerizon-Headwater@gibsondunn.com](mailto:GDCVerizon-Headwater@gibsondunn.com)>

**Subject:** Headwater Research v. Verizon et al (Case 2:23-cv-00352) -  
Correspondence

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**[WARNING: External Email]**

Counsel,

Please see the attached correspondence.

Best,

Angeline Alcoriza

Legal Assistant to Jason Wietholter, Daniel Kolko, Dale Chang and Minna Chan

**Russ August & Kabat**

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